

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0399
CORPORATE INCOME TAX
For Years 2001-2002**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax – Applicability

Authority: Ind. Code § 6-2.1-2-2

Taxpayer protests the imposition of gross income tax on management fees paid to employees who did work both inside and outside Indiana.

II. Adjusted Gross Income Tax – Consolidated filing

Authority: Ind. Code § 6-3-2-2; Ind. Code § 6-3-4-14

Taxpayer protests the use of a “stacked” method for computing the adjusted gross income tax liability for its consolidated group.

STATEMENT OF FACTS

Taxpayer is a group of several companies, five of which are at issue in this protest. During 2001, Taxpayer had three management employees who did various work for the company both inside and outside Indiana. However, Taxpayer did not report gross receipts with respect to management fees paid. The Department assessed gross income tax with respect to the management fees, based on the fraction of Taxpayer's Indiana payroll to Taxpayer's overall payroll.

For 2002, Taxpayer filed a consolidated return with five companies included. Four of the companies had significant combined income and significant Indiana apportionment factors; however, a fifth company had significant losses greater than the income of the other four entities combined, and had separately computed apportionment factors relatively lower than the other four companies. As a result of audit, four companies had their combined tax computed under a normal apportionment formula, while the fifth company had its income computed separately.

I. Gross Income Tax – Applicability

DISCUSSION

Taxpayer protests the applicability of gross income tax to management fees that the Department deemed to be Indiana source income. Ind. Code § 6-2.1-2-2 (repealed effective January 1, 2003) provided that gross income tax is imposed on the receipt of “the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.” Here, Taxpayer argues that it is not necessarily possible to determine whether services (or a portion of the services) was performed in Indiana or another state. Taxpayer has not provided sufficient information to rebut the assessment, and accordingly is denied.

FINDING

The taxpayer is denied.

II. Adjusted Gross Income Tax – Consolidated filing

DISCUSSION

Taxpayer protests the method used to determine its adjusted gross income tax liability. Taxpayer notes that, in general, an affiliated group of corporations that have income from Indiana sources are eligible to file a consolidated return under Ind. Code § 6-3-4-14. In a consolidated return, the affiliated group is generally treated as one large corporation. This is in contrast to taxing the affiliated corporations effectively as separate companies and adding their tax liabilities together, generally called the “stacked” method. While Ind. Code § 6-3-2-2(l) and (m) provide for remedial provisions in instances in which income may not be fairly reflected by normal allocation and apportionment methods, Taxpayer has provided sufficient evidence that the remedial provisions provided in those sections are not applicable to its fact situation. Accordingly, Taxpayer’s protest is sustained.

FINDING

The taxpayer is sustained.

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